

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

ROY STEVE DAVIS,
Petitioner,

v.

CIVIL ACTION NO. 1:07CV13
(Judge Keeley)

JOE DRIVER,
Respondent.

**MEMORANDUM OPINION AND ORDER ADOPTING PRELIMINARY REPORT AND
RECOMMENDATION**

I. BACKGROUND

On January 30, 2007, Roy Steve Davis ("Davis"), the *pro se* petitioner, filed an Application for Habeas Corpus Pursuant to 28 U.S.C. § 2241 in that he asserts seven different grounds for relief.¹ The motion was referred to United States Magistrate Judge James E. Seibert for initial review. On March 14, 2007, the

¹Davis asserts the following grounds for relief: (1) his unit counselor refuses to process administrative remedy forms, forwarding them to the warden; (2) medical services have a waiting list of years to see medical staff unless you are assaulted or stabbed; (3) the unit is improperly supervised by staff members that allow other inmates from other units to roam at will that resulted in the death of an inmate from another unit; (4) inmates must wear handmade body armor that consists of hardback book covers and several layers of clothing to ward off assault or attack; (5) Davis is improperly classified as a high category even though he served 65% of his sentence; (6) psychological services refuses to admit Davis into the drug program or provide any stress-free exercise; and (7) Davis' sentence is improperly calculated for 924(c) already served, now currently serving another term.

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Magistrate Judge entered a Report and Recommendations ("R&R") recommending that six of Davis' claims be dismissed without prejudice because they are not claims that can be asserted in a § 2241 motion. The R&R also recommended that the seventh ground of Davis' motion, the alleged improper calculation of his sentence, be served upon the Respondent and that the Respondent be directed to show cause why the writ should not be granted as to that ground.

Davis filed objections to the R&R on March 20, 2007, asserting that the Magistrate Judge erred in determining that six of the seven grounds of his § 2241 motion were not claims that can be asserted in a § 2241 motion.

This Court reviews any objections to the Report and Recommendation de novo but may adopt any parts of the R&R not objected to without detailed review. Davis' failure to object to the recommendation on an issue results in the waiver of his appellate rights on that issue.

II. ANALYSIS

Reviewing the case law de novo, the Court finds that the Magistrate Judge properly applied the controlling legal standard from Preiser v. Rodriguez, 411 U.S. 475, 484, (1973). Davis' first six grounds are civil rights claims that cannot be asserted in a § 2241 motion. Davis would need to file a civil rights complaint in order to assert those claims.

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Consequently, this Court **ADOPTS** Magistrate Judge Seibert's Preliminary Report and Recommendation in its entirety and **ORDERS** that grounds one through six of Davis' motion be **DISMISSED WITHOUT PREJUDICE** and that the remaining ground seven be served upon the Respondent who shall have thirty days from the date of service to show cause why the writ should not be granted as to that ground.

It is so **ORDERED**.

The Clerk is directed to mail a copy of this Order to the petitioner.

Dated: October 24, 2007.

/s/ Irene M. Keeley

IRENE M. KEELEY

UNITED STATES DISTRICT JUDGE